

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Abbass Bozorg

Date Application filed with the Town Clerk: February 28, 2005

Nature of request: Petitioner seeks a Special Permit, under Sections 6.3 and 3.322 of the Zoning Bylaw to create a flag lot and to construct 8 townhouse dwelling units.

Location of property: 81 and 69 Meadow Street, (Map 5A, Parcels 14 and 16, R-VC Zone)

Legal notice: Published in the Daily Hampshire Gazette on March 30 and April 6, 2005, and sent to abutters on March 30, 2005.

Board members: Tom Simpson, Joan Golowich and Susan Pynchon

Submissions:

The applicants submitted the following documents:

- A Locus Map
- A Management Plan dated February 18, 2005
- A set of plans entitled "Meadow Street Housing", prepared by The Berkshire Design Group and Carmen Associates Architects, including:
 - Overall Plan, Layout and Planting Plan, Grading and Drainage Plan, Planting Plan, and Details, dated 2/18/05
 - Unit Floor Plan Layout, Large Elevations – Unit "A", Large Elevations – Unit "B", Building Layout Plan and Elevations, dated 2/5/05
- A revised set of plans entitled "Meadow Street Housing", prepared by The Berkshire Design Group, including:
 - Overall Plan, Layout and Planting Plan, Grading and Drainage Plan, Planting Plan, Details, dated 4/2/05
- A plan entitled "Topographic Plan of Land in Amherst, prepared for Abbass Bozorg, by Ainsworth Associates, dated September 15, 2004.
- A "Stormwater Drainage Report for the Meadow St. Apartment Complex", dated January 21, 2005, prepared by The Berkshire Design Group, Inc.
- A Revised Management Plan, dated May 2, 2005, containing added information about parking, the proposed drainage system and abutting APR land.
- A statement, in accordance with Section 10.5 and 11.231 of the Zoning Bylaw, affirming that the applicants had notified the tenants of 81 and 69 Meadow Street about the Special Permit application.
- A "Proposed Stormwater Management System – Operation and Maintenance Plan" prepared by The Berkshire Design Group, dated May, 2005.

- An ANR plan entitled “Plan of Land in Amherst (Hampshire Co.), MA prepared for Abbass Bozorg”, prepared by Ainsworth Associates, dated March 22, 2005, endorsed by the Planning Board on March 6, 2005, showing the division of the properties at 81 and 69 Meadow Street into two 15,000 square foot frontage lots and one 43, 847 square foot flag lot.

The Planning Department submitted Memorandum Re: ZBA FY2005-00022, dated April 8, 2005, which discussed zoning, previous permits, dimensional requirements, parking, plantings, lighting, proximity to APR land, the lease, the Planning Board’s endorsement of an ANR plan (Approval Not Required) for the property, Planning Board review of the proposed project, the stormwater drainage report and Article 14 of the Zoning Bylaw, Phased Growth.

Jonathan Tucker, Interim Director of the Planning Department, submitted Memorandum 2005-13, dated May 18, 2005, which discussed interpretations of the Zoning Bylaw with respect to uses and dimensional regulations for flag lots.

The Planning Board submitted Memorandum 2005-11, reporting on its meeting of April 6, 2005, and making recommendations on the issues of driveway width, parking limitations, setback from the adjacent farmland, additional planting, “right-to-farm” provisions, cleaning of storm water catch basins, and relocation of an area drain.

Jason Skeels, Town Engineer, submitted a letter dated April 8, 2005, discussing the issues of layout, planting, grading, drainage, details, storm water management, and permits required by the Department of Public Works.

The Conservation Department submitted a document entitled “Agricultural Preservation Restriction” regarding the property at 11 Meadow Street, owned by Joseph Swartz.

Pete Westover, former Conservation Director for the Town of Amherst, submitted an email, dated July 27, 2005, encouraging the Zoning Board of Appeals to make a decision in such a way as to minimize the impact to the Swartz farm of the proposed development.

Vincent O’Connor of 179 Summer Street submitted a letter, dated April 16, 2005 and May 19, 2005, discussing the adjacent APR (Agricultural Preservation Restriction) land, the number of units allowed on a flag lot, the number of units allowed per size of lot, the ANR (Approval Not Required) plan for two frontage lots and vehicles exiting onto Meadow Street.

During the public hearing and at the request of the Zoning Board of Appeals the following documents were submitted:

- The Police Department submitted Police Reports for the properties at 81 and 69 Meadow Street for the past seven years.
- The Health Department submitted information on the dwelling units along Meadow Street that are registered with the Rental Registry.
- The Planning Department submitted information in the form of emails dated March 22, 2005 and July 5, 2005, based on records in the Assessor’s Office and Inspection Services, and maps based on the Amherst GIS Reader, regarding owner-occupied and rental properties along Meadow Street. This information also included names of property owners and numbers of dwelling units for each address.

During the public hearing the applicants, Mr. Bozorg and his wife, Mina Safizadeh, submitted a multi-page document including:

- A diagrammatic map of Meadow Street, showing the properties, addresses, owners' names, and information on whether each property is a multi-family, rental and/or owner-occupied.
- Photographs of the properties at 81 and 69 Meadow Street.
- Page 3 from the lease used at the applicants' properties describing grounds for termination of the lease.
- Police Reports regarding various properties on Meadow Street.
- A notice to tenants of 81 Meadow Street from Mina Safizadeh, dated 9/22/04, notifying them of violations of their lease.
- A letter from Mina Safizadeh and Abbass Bozorg to Charles Sherpa, Chief of Police, dated May 6, 2005, enclosing a notice to tenants.
- A notice to tenants of 81 Meadow Street from Mina Safizadeh dated May 6, 2005, notifying them of violations of their lease.

During the public hearing other documents were submitted as follows:

- A letter and petition from residents of Meadow Street, signed by 19 individuals
- A letter from the Swartz family, dated July 10, 2005
- A letter from Ester Terry, dated July 27, 2005
- A population density impact chart
- An email from Richard, Gold dated July 26, 2005
- A series of photographs from Joseph Swartz of 11 Meadow Street showing properties along Meadow Street, including Townhouse Apartments and 81 and 69 Meadow Street.
- A series of photographs from Michael Liu of The Berkshire Design Group showing multi-family homes at 55 Main Street in Belchertown, illustrating the type of architecture that was being proposed for the project at 81 and 69 Meadow Street.

Site Visit: April 12, 2005

At the site visit the Board was met by Michael Liu of The Berkshire Design Group. They observed the following:

- The location of the properties on a heavily-traveled street, across from the multi-family Townhouse Apartments.
- The other wood frame houses in the neighborhood, built in the late 19th and early 20th centuries.
- The adjacent farmland to the north of the site.
- The major trees on the site that were to be either saved or removed.
- The wooded area between the existing houses and the adjacent farmland.
- The proximity of the property to the North Amherst Village Center.

Public Hearing: April 14, 2005.

Michael Liu of The Berkshire Design Group presented the petition. He made the following statements:

- The proposed project includes the two parcels of land now known as 69 and 81 Meadow Street, which extend from the north edge of Meadow Street to the Swartz farmland on the north side of the property.

- The project includes the creation of two 15,000 square foot house lots that will have frontage on Meadow Street plus a T-shaped flag lot with 49.9 feet of frontage along Meadow Street.
- The access strip for the flag lot will be 120 feet long.
- The proposal is to build two buildings of four units each on the flag lot, each with two stories.
- The new buildings will be set back behind the existing houses.
- There will be a central green space that can be used for recreation.
- The proposed position of the houses preserves and enhances the view.
- There will be 16 parking spaces.
- The dumpster and refuse pad will be screened by evergreens.
- There will be pockets of green spaces behind the new buildings.
- The new buildings will be served by town sewer and water.
- The driveway of the existing house at 81 Meadow Street will be modified by making it narrower, to accommodate only two cars, and moving it to the west, away from the proposed access strip for the flag lot.
- The house at 81 Meadow Street will be converted from a 3-family house to a one-family house and will therefore need only two parking spaces.
- There will be landscaping all around the new development, however the plan will not block the view to the north.

During his presentation Mr. Liu referred to the site plans and the architectural plans that had been submitted with the application. He made the following points:

- The first floor of each unit will have a main entry into an open area that will contain living room, dining room and kitchen.
- The second floor of each unit will contain three bedrooms.
- The siding will be clapboard to match the existing houses along the street.
- The houses will have porches and gabled roofs.
- There will be a variation in window locations and sizes.
- The footprint of each unit will be approximately 600 square feet.
- The architecture will be consistent with the local architecture of farmhouses and Greek Revival buildings in the neighborhood.

Mr. Simpson noted that each unit would have a total of 1200 square feet of living area.

Ms. Golowich asked about the area in the middle of the lot, between the buildings and whether there would be play equipment located there for the children. Mr. Bozorg responded that it would be acceptable to him to have playground equipment located in this open area.

Ms. Golowich asked about new plantings. Mr. Liu responded that the project would save the 42 inch maple next to the proposed driveway and that existing trees to the west will be retained. He also noted that additional evergreen and deciduous trees and shrubs will be planted.

Ms. Golowich asked about whether a curb cut application would be needed. Mr. Liu responded that the plan had been presented to the Planning Board the previous week and that all of the comments of the Planning Board and of the Town Engineer, including curb cuts, will be accommodated.

Mr. Simpson asked about the new curb cut for the house at 81 Meadow Street. Mr. Liu responded that the owner's intention is to convert the house back to a single-family rental. The relocation and reconfiguration of the driveway for 81 Meadow Street is a result of the conversion back to a single-family house since the house will need only two parking spaces once it is converted.

Mr. Simpson expressed concern about the sight lines for cars backing out of the proposed new driveway. Mr. Liu responded that, in his opinion, Meadow Street is straight and level and that sight distance is good. He also mentioned the possibility of putting in a turnaround on the driveway at # 81 Meadow Street so that cars could drive out facing forward.

Mr. Simpson noted that the existing house at 69 Meadow Street has a wide driveway that is proposed to remain.

Ms. Golowich asked about the extent of the R-VC (Residential Village Center) zoning district. A zoning map was presented to show the extent of the R-VC zone.

Michael Liu stated that the proposed units are small and will be more affordable than other housing being built in the area. He showed photographs of similar units recently built in Belchertown, at 55 Main Street. He stated that the development in Belchertown has seven buildings, with fourteen units in total.

Susan Pyncheon asked Mr. Liu to provide the Board with a reference for the density being proposed on the site. Mr. Liu responded that the development in Belchertown had more land than the project proposed on Meadow Street so it was hard to make a comparison between the two. He did not give another reference.

Mr. Simpson asked if the proposed units would be market-rate rentals. Mr. Bozorg stated that they were to be market-rate units and that he had not decided whether they would be rentals or condominiums.

Bonnie Weeks, Building Commissioner, stated that 81 Meadow Street currently contained rental housing with students as tenants. Mr. Bozorg stated that 81 Meadow Street would be converted back to a one-family house if this current proposal were to be approved.

Michael Liu stated that Mr. Bozorg had considered a proposal in which the two properties would be combined into one lot, with multi-family townhouse units connected to the existing houses. He went on to say that Mr. Bozorg would like to be able to sell the single-family houses on the frontage lots at a later date if the current proposal is approved.

Mr. Simpson asked Mr. Liu to review the building and lot coverage information for the record. Mr. Liu noted that all coverage and setback information was shown on Sheet SP – 1 of the plans. He quoted from the information shown on that sheet as follows:

For the two frontage lots the lot sizes will be:

- 15,037.3 square feet for 81 Meadow Street
- 15,000.5 square feet for 69 Meadow Street

Building coverage for these lots will be:

12.7 % for 81 Meadow Street
11.2% for 69 Meadow Street.

Lot coverage will be:

17.1% for 81 Meadow Street
18.3% for 69 Meadow Street

These lot sizes and coverage amounts meet the requirements of the Zoning Bylaw for houses in the R-VC zone.

For the flag lot:

- Lot size is 37,858.5 square feet, exclusive of access strip.
- Building coverage will be 14.4%.
- Lot coverage will be 40.0%.

Mr. Liu commented that this lot size and coverage meets the requirements of the Zoning Bylaw for flag lots in the R-VC zone.

Vincent O'Connor of 179 Summer Street made the following comments:

- The farmers who farm the adjacent land had wanted to come to the public hearing, but could not attend; they would be able to come to a continued hearing, if the Board chose to continue it.
- There was no problem with the creation of a flag lot, per se.
- The newly-created frontage lots must be single-family homes to comply with zoning requirements.
- The Board should think about the benefits of having multiple units at 81 Meadow Street.
- There should be a generous buffer between 81 Meadow Street and the adjacent farmland.
- Other existing houses along the north side of Meadow Street were close to the street and the units proposed on the flag lot were not in keeping with this pattern.
- The houses along the street provided a generous buffer between the busy development and the farmland.
- The problem with the proposed project was that the proposed use is a multi-family development.

He went on to say that:

- Section 6.3 of the Zoning Bylaw refers to a "principal building" on a flag lot, not to "principal buildings" and that therefore, multi-family housing was not permitted; there should not be more than one unit on the new flag lot.
- There is a flag lot with multiple units on it on Chestnut Street, but that flag lot has ample lot size to accommodate those units.
- This lot is too small for 8 units.
- There are three different scenarios for how this lot could be developed.
- The lot should not be allowed to hold more than two or possibly four units, because of the dimensional requirements for flag lots and those put forth in Table 3 of the Zoning Bylaw.
- Apartments are not normally allowed on flag lots.
- The proposed buildings would be too close to the farmland property line.
- The units should be rotated to the southern side of the flag lot to move them away from the farmland.
- A buffer of 40 feet or more should be created between the units and the farmland.

- The adjacent farmland is under an APR agreement (Agricultural Preservation Restriction) that requires that the land be farmed.
- Anyone who owns or lives in one of the new units in the future should be prohibited from making a complaint about farming operations on the adjacent parcel.

Mr. Bozorg noted that if he were to create a plan using the whole site (combining the properties for 69 and 81 Meadow Street) he could build between 14 and 16 units on the site. He offered to install a fence along the property line between his development and the farmland to protect the farmland.

Mr. O'Connor noted that the applicant could request a Special Permit for 16 units but that the Board was under no obligation to grant such a permit.

The Board requested that the Planning Department research the issue of lot size for the flag lot, with particular reference to the number of units that were allowed to be built.

Mr. O'Connor noted that the proposed development encourages backing out onto Meadow Street and that the properties need to have turnarounds to prevent backing out onto the street.

Joan Golowich MOVED to continue the evidentiary portion of the public hearing to May 19, 2005. Susan Pynchon SECONDED the motion. The Board VOTED unanimously to continue the public hearing.

Continued Public Hearing: May 19, 2005.

Christine Brestrup, Land Use Planner, reported to the Board on the Planning Department's research into the issue of lot size and the number of units that are allowed to be built on the flag lot. She stated that there were three ways to interpret the Zoning Bylaw requirements on this matter. The three interpretations are as follows:

Method 1. The first unit requires 15,000 square feet, according to Table 3 of the Bylaw. Each additional unit requires 4,000 square feet. Therefore, 8 units require a total of $15,000 + 28,000 = 43,000$ square feet. Since the proposed flag lot contains a total of 43,847.5 square feet including the access strip, the 8 units could be built, according to this interpretation.

Method 2. The first unit requires 30,000 square feet since that is the square footage required for the body of a flag lot in the R-VC zone (see Section 6.32). Each additional unit requires an additional 4,000 square feet. Therefore, 8 units would require a total of $30,000 + 28,000 = 58,000$ square feet, and 8 units would not fit on the lot, which is 43,847.5 square feet including the access strip. Only four units could be built on the lot based on this interpretation. ($30,000$ square feet + $12,000$ square feet = $42,000$ square feet).

Method 3. The first unit requires 30,000 square feet, according to Section 6.32 of the Bylaw. Each additional unit requires an additional 8,000 square feet (twice the amount normally required for an additional unit, since this is a flag lot). Therefore, 8 units would require a total of $30,000 + 56,000 = 86,000$ square feet and would not fit on the lot, which is 43,847.5 square feet. This interpretation would mean that only two units could be built on the flag lot ($30,000 + 8,000 = 38,000$ square feet).

Ms. Brestrup also reported that Town Counsel, Alan Seewald had advised the Board that there was nothing that specifically prohibited construction of multi-family housing on a flag lot and that it was up to the Board to determine whether multi-family housing should be allowed on this flag lot.

In addition, Ms. Brestrup reported that there is no precedent in Amherst for more than three units on one flag lot. The one example of three units on a flag lot consists of a two-family house with a supplemental apartment on Chestnut Street.

Michael Liu of The Berkshire Design Group presented a series of plans for the site, as follows:

- 1) The original plan, submitted with the application.
- 2) A revised plan showing the buildings moved farther away from the north property line. Instead of being 15 feet from the farmland, the units would now be 22 feet from the farmland. Mr. Liu noted that this change will not negatively affect the proposal.
- 3) An alternate plan showing the buildings flipped to the south and the parking flipped to the north. Mr. Liu said that the “flipped” plan would result in a loss of green space.
- 4) An alternate plan in which the flag lot would be eliminated and only one single-family lot would be created, with the house at 69 Meadow Street situated on the single-family lot. In this plan, a multi-family development of 11 units could occur on the remaining land, with townhouses being attached to the house at 81 Meadow Street. There could be a total of 12 units on the properties that now contain 69 and 81 Meadow Street, including 1 on the lot at 69 Meadow Street.
- 5) An alternate plan in which the two properties at 69 and 81 Meadow Street would be combined and a total of 15 units would be proposed. In this scheme the buildings would be set back 20 feet from the farmland. The existing single family homes would become 3-family homes and the parking would be hidden from Meadow Street behind the buildings. Mr. Liu noted that this plan is preferred by Mr. Bozorg.

Mr. Simpson asked about the lot and building coverage. Mr. Liu did not directly answer this question, but he stated that either of the alternate plans, # 4 or # 5, would eliminate the flag lot as a problem.

Mr. Liu stated that the idea of a one-way driveway in the form of a boulevard was explored, with one-way in and one-way out. He stated that the Fire Chief might like a boulevard if the site is developed so intensely.

Mr. Bozorg offered to plant a lot of trees if the project is approved.

The Board discussed the Phased Growth Bylaw and how it applied to this case.

Ms. Pyncheon asked about the number of bedrooms existing and proposed. Mr. Liu stated that the existing houses have a total of 10 bedrooms, with 6 bedrooms in the house at 81 Meadow Street and 4 bedrooms in the house at 69 Meadow Street. The new plan would have 8 new units with 3 bedrooms each, for a total of 24 bedrooms. It would also continue to have the 10 existing bedrooms. Therefore the grand total of bedrooms for the original scheme would be 34 bedrooms.

Mr. Liu stated that one unit may be fully-accessible and that some may be affordable. Mr. Simpson noted that a fully-accessible unit would need to be one-story and the proposed units are all two-story, so they could not be fully-accessible in their current form. Mark Snow, Assistant Building Commissioner, noted that he would look into the requirements for accessibility for townhouse units.

Mr. Simpson asked about energy efficiency. Mr. Bozorg stated that everything in the new units will be energy-efficient and that the buildings will be heated by natural gas. Mr. Liu noted that the buildings will be well-insulated with energy-efficient windows and that there will be water-saving devices added to the plumbing. He added that there will be more than 2,000 square feet of open space per unit.

Mr. Simpson asked Mr. Liu and Mr. Bozorg to state what they were looking for from the Board. Mr. Liu stated that the applicant would like the Board members to make a statement about which plan they preferred, out of the plans presented. This would help the applicant to know how to proceed with the application. Mr. Liu also wanted a discussion of the density issue with regard to how many units could be built on the site.

The Board discussed the plans that had been presented. Mr. Liu noted that a new ANR plan would need to be filed if one of the alternate schemes were to be developed.

Vincent O'Connor, 179 Summer Street, commented that keeping the existing houses as houses, rather than turning them into part of a townhouse development was preferable in the sense that the houses were more compatible with the other existing houses on Meadow Street. He contended that Meadow Street was lined with single-family houses located close to the road and that this traditional type of development provides a buffer for the farmland. He stated that the proposed plan and the alternate plans are both too close to the farmland. He suggested that the applicant meet with the neighbors and with the abutting farmer to work out the best plan. He stated that the he and the neighbors were not generally opposed to more housing units. He stated that the applicant's plan as submitted was not suitably located in the neighborhood.

Mr. Bozorg stated that the house at 81 Meadow Street has been a 3-family house for many years. He stated that he has tried to talk to the neighbors about his proposal, but many of the houses are rentals.

Mark Power of 129 Meadow Street spoke in opposition to the proposal. He made the following statements:

- He is a member of the Farm Committee, but he is not a farmer; he owns The Harp in North Amherst.
- The abutting farm is covered by an APR.
- Joe Swartz owns the farmland; it is actively farmed by the Waskiewicz's.
- There a small rental house located to the west of 81 Meadow Street.
- The proposed development is too close to Mr. and Mrs. Terry's backyard at 97 Meadow Street.
- The north side of Meadow Street is different in character from the south side, where Townhouse Apartments are located.
- To his knowledge, the neighbors have not been contacted by the applicant.

Mr. Simpson asked that Mr. Power list the kinds of impacts that the proposed project would have on the farm and the impacts that the farm would have on the new project. Mr. Powers responded that there would be pesticides, manure and mechanical noise on the farm which might negatively affect the proposed housing and that the new project might negatively affect the drainage on the farm.

Mr. Simpson asked the other Board members if they had opinions on the proposal.

Susan Pynchon stated that the proposal seems very different from other development in the neighborhood. The density and look are different. With reference to the alternate proposals, Ms. Pynchon stated that she was willing to work with the existing application and not consider the alternate proposals.

Mr. Simpson stated the following:

- In his opinion, the intensity of development was the same for all of the alternate plans and the plans should be compared based on aesthetics.
- The buildings and structures were fairly close.
- The original proposal was the best of all those presented, since it maintains the appearance from the street more than the others.

Ms. Golowich stated that the plan should have more trees.

Mr. Simpson stated that he would like the Board to reach an agreement to work with the proposal presented.

Ms. Pynchon asked if the applicant had looked at plans that were less dense than the original.

Mr. Bozorg responded that a total of 10 units was the minimum number that was financially feasible. He stated that the original plan had fewer units than the two alternate plans and that reducing the number further was not feasible.

Mr. Liu noted that the proposed units were small and would not be luxury single-family homes.

Ms. Golowich stated that the applicant should come forward with a proposal. The Board shouldn't have to decide among alternatives. However she stated that she preferred the original proposal to the alternate plans.

Susan Pynchon MOVED to continue the evidentiary portion of the public hearing to June 23, 2005, at 7:30 p.m. Joan Golowich SECONDED the motion. The Board VOTED unanimously to continue the evidentiary portion of the public hearing.

Continued Public Hearing: June 23, 2005.

Michael Liu of The Berkshire Design Group made the following comments:

- The applicant was waiting to hear the Board's interpretation of the Zoning Bylaw regarding the density that would be allowed on the site.
- Mr. Liu had met with the Planning Department staff to discuss the various methods of calculating the number of units that would be allowed.
- The plans had been revised to move the buildings away from the farmland.

- The comments of the Planning Board, the Planning Department and Town Engineer, Jason Skeels, had been incorporated into the revised plans.
- The plans complied with setback requirements for front, side and rear yards.
- The plans show the required amount of parking.
- The proposed buildings will not be easily seen from Meadow Street.

Mr. Simpson stated that the Board needed to interpret the Bylaw with respect to the number of units allowed on a flag lot. He stated that, in his opinion, the method for calculating density had been reflected correctly in the original plan.

Ms. Golowich expressed her agreement with Mr. Simpson's statement regarding the interpretation of density allowed on a flag lot. She added that townhouses are allowed in the R-VC zone and that there isn't much room on the lot to move the buildings to a different location.

Mr. Liu stated that the building orientation would function well for solar gain and that the plan does not show a typical row-house development. He confirmed that the two existing houses would be single-family homes if the application were approved, emphasizing that 81 Meadow Street would be converted to a single-family house, for a total of 10 units in the project as a whole.

The Board discussed whether a berm could be built along the farm edge to keep stormwater runoff from traveling across the property line.

Mr. Liu agreed that a berm could be built. He further stated that there had been soil tests and percolation tests done on the site, that the soil was sandy and that stormwater would be distributed into the ground on the site. His firm has designed an underground detention basin to hold runoff before it seeps into the soils.

Mr. Simpson asked whether there would be a resident manager on the site. He noted that the Management Plan had included snow removal, landscape maintenance and building maintenance. He asked if the two houses would be rented. Mr. Simpson noted that the two houses should be included in the Management Plan, if they are to be rented.

The applicant responded that the two houses will be rented to lower income families.

Ms. Golowich noted that there should be regular oversight of the properties. The applicant responded that the owners will be providing regular oversight. The Board discussed the issue of resident managers. The applicant stated that one individual tenant would be designated to be in charge of notifying the owners of any problems.

Mr. Simpson asked about exterior lighting. Mr. Liu responded that there was no proposed exterior lighting other than porch lighting for each unit. The units were located close to Meadow Street and, between the street lights and the porch lights, the site would be adequately lit.

Mr. Bozorg stated that post lights could be added in the parking lot. Ms. Pynchon noted that there should be a light by the dumpster as well.

The Board reviewed the proposed lease. The Board also reviewed the letter dated April 8, 2005, from Jason Skeels, the Town Engineer and discussed the revised Drainage Report and the issue of universal accessibility.

Joseph Swartz, director of the farm directly to the north of the site and a resident of 11 Meadow Street, spoke in opposition to the proposal. He made the following comments:

- # 69 and 81 Meadow Street are “party houses”; party goers enter onto neighbors properties and scatter various forms of litter and debris around the neighborhood.
- The proposed plan shows the new units tucked behind the houses on Meadow Street creating a hidden place where large gatherings can occur.
- The adjacent farmland is a working farm and the proposed units are incompatible with a working farm.
- Storm drainage from the new units will be channeled into the ground. Groundwater is only 12 feet below the surface and the potential for pollution is high. Runoff from the site and the parking lots will affect the quality of the groundwater; the soil percolates well and therefore allows contamination to migrate easily.
- He has concerns for the safety and comfort of the people who may live in the units, because of adjacent noise associated with farming activities.

Mr. Swartz stated that he had not received a notice of the hearing.

Michael Terry, representing his parents Esther and Eugene Terry of 97 Meadow Street, stated that his parents had not received notice of the hearing. He stated that his family has concerns regarding parties and garbage on the site.

Ms. Brestrup stated that notices had been set to abutters on March 30, 2005, notifying them of the public hearing that was opened on April 14, 2005, for this application, in accordance with Mass. General Law and the Zoning Board of Appeals Rules and Regulations. She further stated that the Certified Abutters List was on file in the Planning Department.

Joe Waskiewicz, of Meadow Street, the farmer who farms the adjacent Swartz land, stated that farmers hours begin early and are not compatible having with residences so nearby.

Mark Power, 129 Meadow Street, stated that the new development would be unsafe for the children in the neighborhood, who ride their bikes on the sidewalk. He also noted that there are parties late at night and early in the morning. He noted that the new development would contain over 32 bedrooms, including the single-family houses.

Vince O'Connor, of 179 Summer Street, reviewed Section 10.38 of the Zoning Bylaw and made statements about how the proposal does not meet the criteria expressed in that Section of the Bylaw. He also noted that the existing properties at 69 and 81 Meadow Street need better management.

Mr. Bozorg responded that the current tenants of 69 Meadow Street are good tenants and that the tenants at 81 Meadow Street had been served a notice of eviction. He also noted that most of the south side of Meadow Street is rental and that all of the tenants there are students. He stated that he was trying to build condominium townhouses for low income people.

Ms. Pynchon asked that the following information be submitted to the Board:

- The police reports for the properties at 69 and 81 Meadow Street.
- Information on rental housing versus owner-occupied housing along Meadow Street, including information from the rental registry that is kept by the Board of Health.
- Information on whether the adjacent farm is active or not.
- Precedent for flag lots being used for this type of development.

Christine Brestrup of the Planning Department noted that there were two projects in town in which flag lots had been developed for more than one unit. One project was the three-family house on Chestnut Street (a duplex with an added supplemental apartment). The other project was Pine Street Co-housing, in which several of the lots were flag lots developed with two-family homes.

The Board discussed what the appropriate setback should be from the APR farmland.

Mr. O'Connor presented a map of the Meadow Street area and noted that the setbacks from the road for the existing houses on the north side were similar and that the new development was not in keeping with the existing pattern.

Susan Pynchon MOVED to continue the evidentiary portion of the public hearing to July 27th at 7:30 p.m. Joan Golowich SECONDED the motion. The Board VOTED unanimously to continue the evidentiary portion of the public hearing.

Continued Public Hearing: July 27, 2005.

Mr. Simpson began the continued public hearing by noting that the Board had continued the hearing in order to receive new information regarding the application. He stated that the Board had received new information and he went on to list that information as follows:

1. A record of police and emergency service calls for the last several years. Mr. Simpson had counted the calls that concerned the properties, including noise complaints, liquor law violations, suspicious activity and fights. Not including fire-related calls or citizen transports, in which the residents were victims of incidents, the calls were as follows:

<u>For 81 Meadow Street</u>		<u>For 69 Meadow Street</u>	
2005	1 call	2005	0 calls
2004	5 calls	2004	3 calls
2003	0 calls	2003	2 calls
2002	0 calls	2002	0 calls
2001	0 calls	2001	0 calls
2000	0 calls	2000	1 call
		1999	1 call
1998	1 call	1998	4 calls
1997	0 calls		

2. A letter and petition from residents of Meadow Street, signed by 19 residents, of whom 3 or 4 were not residents of Meadow Street.
3. A letter from the Swartz family.
4. A letter from Ester Terry.
5. A population density impact chart.
6. An email from Pete Westover, former Director of the Conservation Department.
7. An email from Richard Gold.

8. Documentation from the Board of Health regarding multi-family and single-family dwelling units and the number of rentals on Meadow Street that are registered with the Rental Registry.

Mr. Bozorg noted that the Rental Registry was started last year and that he has registered all of his properties.

Ms. Pyncheon stated that the Board had also received confirmation that the abutters' list had been produced by the applicant and that the mailing to abutters went out on March 30, 2005.

Mr. Simpson opened the hearing to comments from members of the public who had new information to offer.

Saida Mamedova, a resident of North Village, spoke in support of the application, and made the following comments:

- She and her family are looking for a house in Amherst, but due to housing problems in Amherst and the high average price of a house, they have been unable to find a house.
- She and her family are interested in the project being proposed. They view it as a good location for families, especially those who are not low income, but who can't afford to live in Amherst.
- They would like a place near a bus line and near Marks Meadow School.
- She knows many families looking for housing and she believes that the neighborhood could benefit from more family housing.

Nazim Mamedova, a resident of North Village, spoke in support of the application and stated that Amherst needs more affordable housing for families.

David Ziomek, Conservation Director for the Town of Amherst, made the following comments:

- He wanted to confirm that the Board had taken a close look at the issues related to the agricultural land to the north of the site.
- It is in the town's long term interest to protect agricultural land and soils.
- He hoped that efforts would be made to create a buffer between the proposed development and the agricultural land to lessen the impact of the development.
- An APR is an agreement that is perpetual. The farmland will be affected by what happens on the adjacent property for many years to come.
- All APR's are perpetual; they represent a form of permanent protection for land and soils. It takes a unanimous vote of the Conservation Commission, a unanimous vote of the Select Board, a 2/3 vote of Town Meeting and a 2/3 vote of the state legislature to overturn an APR.
- He is not aware of the release of any APR in the Valley.

Dan Burbine, owner of the Black Walnut Inn at 1184 North Pleasant Street, spoke in opposition to the application and made the following comments:

- He is a small business owner and wishes to support additional business on Meadow Street.
- He is concerned about the proposal because of the number of police calls and occurrences every week in his neighborhood, when the university is in session.
- He supports the idea of affordable housing for families, but this new project would likely become student housing.
- He would like to see development that enhances the neighborhood.

- He asked if there would be a chance to review the Special Permit in the future.
- He was also concerned about water quality.

Joseph Swartz of 11 Meadow Street spoke in opposition to the application and expressed the following concerns about the proposal:

- Negative impact on the neighborhood and on adjacent farmland.
- Lack of open space in the proposal, which may cause tenants to use the farmland for recreation.
- Liability of the farmer for accidents that might occur to tenants who enter his farmland.
- Language of the lease with regard to active farming on adjacent farmland will not absolve farmer of liability for tenants' accidents.
- Issues of traffic pattern and speed generated by the proposed project.
- Proposed driveway shielded by buildings, making cars hard to see.
- Existing sidewalk heavily used by young children, who may be hurt by traffic entering and exiting the site.
- The density of the project, with 24 bedrooms on about one acre of land, is much greater than other properties in the neighborhood.
- Many of the existing trees on the site would be lost due to construction; newly planted trees take a long time to mature.
- Safety of tenant families would be jeopardized by adjacent farming operations.
- Fear that other neighbors would propose to use their land in a similar way.
- Incompatibility with Section 10.38 of the Zoning Bylaw.
- The proposed use is inappropriate for the neighborhood.
- He grows hydroponic vegetables on his farm. His groundwater wells, used in the farming operations, would be contaminated by the storm drainage that will be directed into storm water leaching basins.
- Greater care needs to go into the design of the storm water management system, to insure that the groundwater will not be contaminated.
- The drainage system is not designed to handle salt, solvents and other soluble contaminants.
- Large farm equipment, fertilizers and pesticides are used on the farmland and could be potentially hazardous to tenants.
- The roads around the site are scenic highways and need to be preserved.
- The Board should solicit input from the Massachusetts Farm Bureau with regard to impact of development on farmland.

Mr. Simpson asked what effects the pesticides and herbicides used in the farming operations had on groundwater quality.

Mr. Swartz responded that there was no effect on groundwater because the method of pesticide and herbicide application is state-approved. He further noted that hydroponics is a pesticide-free form of agriculture. The crop land has minimal pesticide use, although pesticides are used to some degree.

Joe Waskiewicz of 324 Meadow Street spoke in opposition to the application and made the following comments:

- The APR is important to the town and will make sure that agricultural land is available for the future.
- Farmland does not cost the town for services; it pays the town, unlike houses, which do cost the town for services.

Mark Power of 129 Meadow Street spoke in opposition to the application and commented as follows:

- The Police Reports do not “tell the tale” of what really happens on Meadow Street; there are constant parties on Meadow Street.
- The proposed development is similar in size to the Hobart Lane apartment complex.
- Student housing is not compatible with affordable family housing.
- The Board should not assume that only one person will live in each of the new bedrooms.
- The proposed development is denser than it should be.

Vince O'Connor of Summer Street spoke in opposition and commented as follows:

- The proposed development is not in conformance with Section 10.38 of the Zoning Bylaw in that it is not suitably located in the neighborhood.
- The neighborhood to be considered is the north side of Meadow Street.
- The population density impact chart shows that the proposal is not suitable.
- If the proposed housing development is to be considered “affordable housing” it needs to have written agreements with the housing authorities.

Michael Liu of The Berkshire Design Group spoke in support of the application.

- He noted that the proposal adheres to the Zoning Bylaw requirements with respect to lot coverage; forty percent of the lot may be covered in the R-VC zone and that is what the plan shows.
- The green spaces are designed to allow smaller gathering spaces.
- There are existing trees on the site that will be retained and new trees that will be planted.
- There are also many trees on the single-family frontage lots that will be created if this application is approved.
- The designers intend to save the large maple tree near the driveway.
- The vegetation to the rear is scrub saplings, sumac, Japanese knotweed and other invasive species. These invasive species will be eliminated.
- He referred to the photographs of the housing in Belchertown which his firm had designed and stated that the currently proposed houses would be smaller.
- The building's architecture will fit in with the neighborhood.
- The size of the footprints of the new buildings will be 2,400 square feet, for four units; the existing houses on the frontage lots are 1,850 square feet and 1,400 square feet. The other houses on the street are significantly larger.
- The character, size and style of the buildings will fit into the neighborhood.
- The neighborhood should include the south side of Meadow Street, when considering density issues.
- The applicant is willing to install a fence on three sides of the property to prevent access onto the farmland by the tenants of the new project.

- There is no way to prevent someone from dumping chemicals on the ground anywhere in the neighborhood. The tenants of this property will be no more likely to do this than their neighbors on the nearby properties.

Abbass Bozorg, the applicant, spoke in support of the application. He offered to accept the suggestions made by Pete Westover, former Conservation Director.

Mina Bozorg, the wife of the applicant, spoke in support of the application. She is co-owner of 69 and 81 Meadow Street. She is trained as a sociologist and teaches at the University of Massachusetts. She made the following comments:

- She produced a copy of the abutters' list and stated that all neighbors were notified of the public hearing. The legal ad was published in the newspaper on March 30 and April 6, 2005.
- She is concerned about the negative stereotyping of students.
- She disagreed with the previous characterizations of Meadow Street with regard to single-family housing and owner-occupied housing.
- She produced data on the single-family or multi-family status of each property, based on her own research.
- The Meadow Street neighborhood is zoned for multi-family housing.
- She stated the following conclusions:
 - The majority of the houses are rentals, even the single-family houses.
 - The majority of the houses are multi-family rentals.
 - There are three owner-occupied houses, the Swartz, Terry and Hart homes.
 - The majority of the landlords are absentee landlords, except the Bozorgs.
 - One side of the street has apartment complexes, including Townhouse Apartments.
- Neighbors who entered her property for the purpose of photographing 69 and 81 Meadow Street were trespassing.
- The Bozorgs are vigilant about the people to whom they rent.
- The Bozorgs have to abide by town regulations in dealing with tenants.
- The Bozorgs have renovated both houses and have improved the appearance of these houses. They have planted a hedge in front of the houses.
- The lease they use (page 3) contains rules regarding parties. Tenants need to ask permission to have parties.
- With regard to the Police Reports, if the Bozorgs receive a complaint they notify the tenants and remind them of the provisions of the lease.
- Most of the Police Reports for Meadow Street are reports from Townhouse Apartments.
- Conditions at 81 and 69 Meadow Street have improved with respect to the number and type of Police Reports.
- The Bozorgs are not trying to maximize their profit from the property. If that were their goal they would not have tried to save the existing trees and they would have proposed a larger number of units.
- She urged the Board to see the plan as it is – small and well-designed.

Christine Brestrup, Land Use Planner with the Planning Department, referred to a conversation she had with Jason Skeels, Town Engineer, with regard to drainage. Mr. Skeels thought that some of the concerns regarding groundwater contamination could be dealt with by installing monitoring wells between the Bozorg property and the well on the Swartz farm. These wells should be

installed prior to construction and should be used to determine where the groundwater travels from the Bozorg property. If it does not flow in the direction of the Swartz wells then the issue of potential groundwater contamination may be of less concern to Mr. Swartz. In addition, these monitoring wells could be used after construction to monitor the quality of the groundwater at various points between the Bozorg property and the Swartz wells.

Ms. Golowich asked what can be done by right on this property, if the permit is not granted. She noted the potential conflict between the development on the north side of Meadow Street and the adjacent farm. She also noted that the neighborhood already contains a large number of student rentals.

Ms. Pyncheon expressed her concerns about cars exiting the site, crossing the sidewalk where children may be walking or riding bicycles.

Mr. Simpson noted that there had been no traffic study done for this project.

Mr. Liu responded that the traffic impacts would be minimal. However, if the Board required a study of the traffic impacts, his firm would analyze the existing condition with the two existing houses and compare it with what is proposed. He referred to the ITE manual which contains commonly-accepted standards for analyzing traffic impacts.

Mark Snow commented that the house at 81 Meadow Street would need to be converted back to a single-family house as soon as construction began on the proposed development. He further commented that the Fire Department may require access to the rear of the buildings and that the units may need to be sprinklered.

Mr. Bozorg noted that he has more than 12 families who have expressed interest in the proposal.

Ms. Pyncheon stated that she would like to see a traffic analysis, but not a complicated, expensive one. She was particularly interested in the possibility of having a "speed table" constructed at the sidewalk, similar to the ones that Amherst College had installed on Route 9, to slow traffic.

Mr. Simpson noted that 95% of the people from the project will not back out onto Meadow Street. The drivers from the new townhouse units would drive out forward.

Joseph Swartz asked the Board to look at the issues of usable open space as well as fire and emergency access.

Ms. Pyncheon asked about whether the new units would be rentals or condominiums. Ms. Brestrup noted that Mr. Bozorg had indicated that they would most likely be condominiums.

Susan Pyncheon MOVED to close the evidentiary portion of the public hearing. Joan Golowich SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.

Public Meeting

At the public meeting (the deliberative portion of the public hearing) the Board discussed the alternatives to the current plan. They discussed whether or not the property might be developed without a Special Permit and without a flag lot. Mr. Simpson noted that the entire land area could

be made into one lot and developed as such. There was continued discussion of what might happen to the parcels under an alternate plan. The Board concluded that any multi-family housing proposal would require a Special Permit. Mr. Simpson noted that one of the alternative plans shown to the Board during the public hearing had included 15 or 16 units.

Mr. Simpson asked if either of the other Board members was definitely opposed to the proposed project. Ms. Pyncheon stated that she had a lot of concerns about the impacts on the farm, about safety issues, about a suitable buffer between the farm and the development and about liability.

Mr. Simpson stated that a berm could be built at the northern property line to block surface water from the new development from entering the farmland. He also noted that a "good sized" fence would control the tenants and keep them from entering onto the farmland. Such a fence would also act to protect the new development from farming activities.

Ms. Golowich noted that the Board is not bound by precedent. The Board must react to the proposals brought before it. She further noted that the Board had been presented with a proposal and it should think about that proposal and how to minimize its impact.

Mr. Simpson noted that there are residential uses adjacent to farms all over the country. A 6 foot high fence with ladder-like construction that can not be climbed would be satisfactory as a separation between the farm and the development.

Ms. Pyncheon asked if the units would be affordable. Mr. Simpson stated that the Board had received nothing in writing about affordability, so the assumption must be that they would be market-rate units.

Ms. Pyncheon noted that 8 units seem like a lot on this parcel. She stated that a less dense proposal should be considered in order to minimize the impact.

Mr. Simpson noted that a parcel of this size that was not a flag lot could accommodate 8 units according to the Zoning Bylaw.

Ms. Pyncheon stated that she thought that the Board was expecting some information from outside parties, such as the Farm Bureau. Mr. Simpson noted that the Board would need to reopen the evidentiary portion of the public hearing in order to receive more information.

Ms. Pyncheon stated that she thought that the Board was expecting information from a representative of the state government. She referred to Pete Westover's email, [which mentioned the Massachusetts Commissioner of Agriculture and a representative of the Mass. Farm Bureau.] Ms. Pyncheon stated that she was interested in obtaining statistics regarding the impact of development on farms.

With reference to Mr. Westover's email Ms. Golowich stated that she did not think that a 50 foot buffer between the development and the farm was possible in this case due to the size of the site.

Tom Simpson MOVED to continue the public meeting (deliberative portion of the public hearing) to August 10, 2005, at 7:00 p.m. Susan Pyncheon SECONDED the motion. The Board VOTED unanimously to continue the public meeting.

Continued Public Meeting: August 10, 2005

At the continued public meeting, the Board discussed the application.

Christine Brestrup stated that she had talked with the Assistant Fire Chief, Mike Zlogar, since the July 27, 2005, public meeting. Assistant Chief Zlogar had not reviewed the plans prior to the close of the public hearing. She reported that Assistant Chief Zlogar did not have any significant changes to suggest in the plans and that he had determined that the buildings would require sprinklers. She noted that if the Board wished to have a more detailed report on her meeting with Mr. Zlogar the Board would need to reopen the public hearing.

Mr. Simpson stated that he was in favor of granting the permit and made the following comments:

- The density of the proposed development was compatible with the intent of the Bylaw for that zoning district.
- The number of units being proposed was less than what might be permitted if the lots were combined and developed as one parcel.
- The R-VC district was a suitable place for this type of development.
- Conditions could be placed on the project to lessen its impact, to protect farmland and to deal with traffic congestion.
- The issue of groundwater contamination was not a greater problem on this site than on other residential properties surrounding the farmland.
- The two existing houses on the property would need to revert to single-family status if the Special Permit were granted.

Ms. Pynchon stated that she agreed with some of the statements made by Mr. Simpson, however, she thought that the project presented risks to the neighborhood. She commented as follows:

- The abutters had legitimate concerns.
- She was particularly concerned about density and traffic.
- Although the proper number of parking spaces was provided, there was no room on the site for visitor parking.
- The proposed number of units and bedrooms would allow a large number of people to live on the site.
- The amount of traffic that would cross the sidewalk would be a problem, since there would be multiple car trips per day [from each unit].
- She was not opposed to some development on the site, but the proposal to build 8 units was of great concern to her.
- She thought that 4 units might be appropriate for the site.
- She would like to see a 50 foot setback from the farmland, as recommended by Pete Westover's email.

Ms. Golowich spoke in favor of the project and made the following statements:

- The issue of parties would be a problem for many of the properties on the street. The proposed project was suitable for the neighborhood.
- The Board should concern itself with the conditions that should be imposed and how to monitor whether the conditions were being met.
- The project would be a benefit to the neighborhood.

Mr. Simpson noted that there were apartments and condominiums across the street and that they also cause problems for pedestrians in terms of traffic. He thought that a raised sidewalk at the driveway would help to slow traffic entering and exiting the site.

The Board discussed the following:

- The possibility of approving a smaller number of units for the site.
- The possibility of imposing a limit on the number of cars on the site to 2 vehicles per unit.

Ms. Pynchon stated that she believed that the current proposal was too dense for the property and was incompatible with the neighborhood and the adjacent farm. She added that it would concentrate too many people in one spot.

Even though the Board had closed the public hearing, the Board recognized Mr. Bozorg, who stated that it was not financially feasible for him to build fewer than 8 units on the property.

The Board discussed possible conditions that it would put on the Special Permit if it were to be granted.

Zoning Board Decision

Tom Simpson MOVED to approve the application with conditions. Joan Golowich SECONDED the motion.

VOTE:

Mr. Simpson – YES
Ms. Golowich – YES
Ms. Pynchon – NO

The MOTION TO APPROVE DID NOT PASS. Ms. Pynchon stated that she believed that the current proposal was too dense for the property and was incompatible with the neighborhood and the adjacent farm. She added that it would concentrate too many people in one spot.

The application for a Special Permit was DENIED because of a failure to receive a unanimous vote in favor of granting the Special Permit to Abbass Bozorg, 195 West Street, Amherst, to create a flag lot and to construct 8 townhouse dwelling units, under Sections 6.3 and 3.322 of the Zoning Bylaw, at 81 and 69 Meadow Street, Map 5A, Parcels 14 and 16, R-VC Zone).

TOM SIMPSON

JOAN GOLOWICH

SUSAN PYNCHON

FILED THIS _____ day of _____, 2005 at _____,
in the office of the Amherst Town Clerk _____.
TWENTY-DAY APPEAL period expires, _____, 2005.
NOTICE OF DECISION mailed this _____ day of _____, 2005
to the attached list of addresses by _____, for the Board.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2005,
in the Hampshire County Registry of Deeds.